

2012 REPORTING REQUIREMENTS FOR INDEPENDENT EXPENDITURES IN MUNICIPAL ELECTIONS

These instructions are intended to provide information about how to report independent expenditures. For detailed information about independent expenditures, including information on express advocacy, membership communications, and other topics, please refer to the Commission staff's guidance memo, "Advice Regarding Independent Expenditures for the 2012 Municipal Elections," or contact the municipal clerk or the Commission staff at (207) 287-4179. The statute and rules governing independent expenditures are 21-A M.R.S.A. § 1019-B and Commission Rules, Chapter 1, Section 10 (94-270 CMR Chapter 1, Section 10).

WHEN DO INDEPENDENT EXPENDITURES HAVE TO BE REPORTED?

It is important to note that it is the total or aggregate amount spent per candidate that matters in determining whether an independent expenditure has to be reported, not simply the amount of a single expenditure. When an independent expenditure report has to be filed depends on the amount and the timing of the expenditure. The table below shows the reporting periods and the applicable thresholds and deadlines for reporting expenditures.

Reporting Period	Threshold for Reporting Expenditure	Report and Due Date
Anytime on or before September 6	Expenditures over \$100 per candidate	60-Day Pre-Election Report due September 7 by 5:00 p.m.
From September 7 through October 23	Expenditures over \$100 per candidate but not over \$250	11-Day Pre-Election Report due October 26 by 5:00 p.m.
From September 7 through October 23 (60 days before the election)	Expenditures over \$250 per candidate	Within 2 calendar days of making the expenditure
From October 24 through November 5 (13 days before the election)	Expenditures over \$100 per candidate	Within 1 calendar day of making the expenditure

An independent expenditure report filed after October 29, 2012 is required to include additional information on Schedule B-IE-3.

HOW DO I REPORT INDEPENDENT EXPENDITURES?

If you or your organization makes an independent expenditure, you must file the attached report with the municipal clerk. The filer must report the date, amount, payee, and purpose of the expenditure, and must allocate the cost among the different candidates affected by the expenditure, indicating whether the expenditure was made in support of or in opposition to each candidate. The Election Law requires the report to contain a notarized statement disclosing whether the expenditure was made in cooperation or consultation with a candidate, so please locate a notary public in advance of the filing deadline.

Filing in person: Independent expenditure reports can be filed at the municipal clerk's office during regular business hours.

Filing by fax or e-mail: Filers should contact the municipal clerk for the procedure for filing a report by fax or e-mail, if available. If a report is filed by fax or e-mail, the original report must be received by the municipal clerk within five calendar days.

If the deadline falls on a weekend or holiday, the report must be filed on that day by fax or e-mail. Please contact the municipal clerk for the procedure for filing a report by fax or e-mail.

WHAT IS AN “INDEPENDENT EXPENDITURE?”

Independent expenditures are payments or obligations made by individuals and organizations, acting independently of candidate campaigns, for certain communications referring to clearly identified candidates.

More specifically, payments or obligations made for communications (for example, advertisements in print or on television or the Internet, literature, robocalls) that expressly advocate the election or defeat of a candidate are always considered independent expenditures.

If the communication does not expressly advocate for the election or defeat of a candidate in a municipal election, it is not an independent expenditure and no report is required.

HOW DO I KNOW IF MY ADVERTISEMENT OR LITERATURE “EXPRESSLY ADVOCATES” THE ELECTION OR DEFEAT OF A CANDIDATE?

The term “expressly advocate” is defined in Chapter 1, Section 10(2)(B) of the Commission rules, which is attached to this memo. The definition includes phrases such as “Jones for House of Representatives” or “Vote for the Governor,” and other words which in context can have no reasonable meaning other than to urge the election or defeat of one or more clearly identified candidates.

IMPORTANT INFORMATION ABOUT EXPENDITURES

The legal definition of expenditure includes not just the making of a payment but also “[a] contract, promise or agreement, expressed or implied, whether or not legally enforceable, to make any expenditure.” (21-A M.R.S.A. §§ 1012(3)(A)(3) & 1052(4)(A)(3)) The Commission views this as requiring the reporting of an unpaid obligation as an independent expenditure.

What is an expenditure?

- any obligation to pay for a good or service
- the placement of an order for goods and services
- a promise or agreement (even an implied one) that payment will be made
- the signing of a contract for a good or service
- the delivery of a good or service even if payment has not been made
- the payment for a good or service

When is an expenditure made?

The earliest of the following events:

- the placement of an order for a good or service
- a promise or an agreement to pay
- the signing of a contract for a good or service
- the delivery of a good or service
- the making of a payment for a good or service

WHAT IF THE COST OF A COMMUNICATION IS LESS THAN \$100 PER CANDIDATE?

If the person making the communication did not spend or obligate more than \$100 per candidate to design, produce, or disseminate the communication, no independent expenditure report is necessary. However, once the aggregated costs for any candidate exceed \$100, a report must be filed for independent expenditures regarding that candidate.

Please note that if an organization uses materials produced by another entity (e.g., a legislative scorecard), the cost of producing that material must be included in the total amount for that communication.

If you have any questions about whether an expenditure for a communication has to be reported as an independent expenditure, please contact the municipal clerk or the Commission staff at (207) 287-4179.

INDEPENDENT EXPENDITURE REPORT – 2012 MUNICIPAL ELECTIONS

Name of Person/Committee Making Expenditure(s) _____

Mailing Address _____

City, Zip Code _____ Telephone _____

Please check the appropriate box for the report you are filing and complete the notarized affidavit and attached schedules. Reports must be filed on a weekend or holiday if that is when they are due by faxing the report to the Commission (287-6775). The Commission must receive the signed original report within 5 days after the fax was received.

☐ Check here if this report is an amendment to a previously filed report? Date of original report: _____

INDEPENDENT EXPENDITURES OVER \$250 MADE FROM SEPTEMBER 7 THROUGH OCTOBER 23, 2012

- Independent expenditures made from September 7 through October 23, 2012 that total more than \$250 per candidate must be reported within 2 calendar days of making the expenditure.

☐ Report of Independent Expenditure over \$250 per Candidate

INDEPENDENT EXPENDITURES OVER \$100 MADE AFTER OCTOBER 23, 2012

- Independent expenditures made after October 23, 2012 that total more than \$100 per candidate must be reported within one calendar day of making the expenditure.

☐ Report of Independent Expenditure over \$100 per Candidate

OTHER INDEPENDENT EXPENDITURES (SELECT ONE REPORT BELOW)

Report (select one)	Due Date	What Gets Reported
<input type="checkbox"/> 60-Day Pre-Election Report	September 7, 2012 by 5:00 p.m.	Expenditures totaling more than \$100 per candidate made on or before September 6, 2012
<input type="checkbox"/> 11-Day Pre-Election Report	October 26, 2012 by 5:00 p.m.	Expenditures totaling more than \$100 but not more than \$250 made from September 7 through October 23, 2012

I CERTIFY THAT THE INFORMATION IN THIS REPORT IS TRUE, CORRECT AND COMPLETE.

Signature of PAC or Party Treasurer, or
Other Authorized Person Making Expenditure(s)

Date

INDEPENDENT EXPENDITURE REPORT – 2012 MUNICIPAL ELECTIONS

AFFIDAVIT

STATE OF _____

COUNTY OF _____

I, _____, being duly sworn, attest that I made each of the expenditures listed in the attached report independently, and not in cooperation, consultation, or concert with, or at the request or suggestion of, any candidate, authorized committee or agent of a candidate in a race affected by any expenditure listed in this report.

Signature of Affiant

Sworn to before me, this _____ day of _____ 2012

(Notary Public/Attorney at Law)

My commission expires: _____

Schedule B-IE-1

CANDIDATE(S) SUPPORTED/OPPOSED

- Please list all candidates that were the subjects of independent expenditures.
- If more than one candidate was the subject of the expenditure, allocate the expenditure among the candidates.

Office sought by candidate (including district # or county)	Candidate's name	Indicate whether expenditure was made in support of or in opposition to the candidate	Amount expended this reporting period for each candidate
Total expenditures for all candidates this reporting period. <i>This amount should equal the total independent expenditures listed on Schedule B-IE-2, Line C. ⇒</i>			

Schedule B-IE-2

PAYMENTS AND OBLIGATIONS

- Please indicate the date, payee, expenditure type, and amount of each expenditure.
- If you are reporting an agreement or obligation to make a future payment, please check (✓) the box next to the expenditure type.

Expenditure Types				
LIT	Printing and graphics (flyers, signs, palmcards, etc.)	PRT	Print media ads only (newspapers, magazines)	
MHS	Mail house (all services purchased)	RAD	Radio ads, production costs	
PHO	Phone banks, automated telephone calls	TVN	TV or cable ads, production costs	
POL	Polling and research survey	WEB	Website design, registration, hosting, maintenance, etc.	
POS	Postage for U.S. Mail and mail box fees	OTH	Other (include description)	

Date of expenditure	Payee, address, zip code	Expenditure type	✓	Amount
A. Expenditures for this page ⇒				
B. Total for all other Schedule B-IE-2 pages (if any) ⇒				
C. Total independent expenditures for this reporting period (A+B). <i>This amount should equal the total amount for all candidates listed on Schedule B-IE-1.</i> ⇒				

Schedule B-IE-3

EXPENDITURE DETAILS

- If you file an independent expenditure report after October 29, 2012 for the General Election, you must provide the following information.

1. The date on which the person making the expenditure placed the order with the vendor for the goods or services	
2. The approximate date when the vendor began providing design or any other services in connection with the expenditure	
3. The date on which the person making the expenditure first learned of the total amount of the expenditure	
4. A statement why the expenditure could not be reported by the eighth day before the election	